

LYNCHBURG CITY COUNCIL REPORT

Meeting Date: February 26, 2002 Council Report # 10

Contact: Michael W. Hill (847-1307 ext. 293) Report Writer: Michael W. Hill (847-1443 ext 282)

Subject: Extension of the contract with Appalachian Power Company (APCo) for electric service to the City of Lynchburg

Purpose of Action:

- To adopt a resolution authorizing the extension of the electric service contract through June 30, 2007

Requested Action: Consideration of a resolution to extend the existing electric service contract through June 30, 2007

Funding: N/A

Prior Action: None

Attachments: Resolution authorizing the extension of the electric service contract with APCo through June 30, 2007 and electing APCo to provide generation services through June 30, 2008 and authorizing the City Manager to execute and deliver on behalf of the City all documents as shall be deemed appropriate to carry out the actions approved by the resolution.

Resolution:

Consideration of the attached resolution

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Other Information:

The City's contract for electric service with APCO will terminate on June 30, 2002. Retail electric service entails three elements: generation, transmission and distribution to the user. Historically, all three elements have been bundled together and the bundled service has been provided by a single supplier and assigned to a designated territory in the Commonwealth. The supplier designated for Lynchburg and much of southwest Virginia is APCO. In 1998 the Virginia General Assembly adopted the Virginia Electric Utility Restructuring Act whereby retail customers are to be granted a "choice" as to whether they continue to purchase the generation element from the incumbent supplier (APCo) or an alternative supplier. The Act contemplates there will be a truly competitive market for electric generation and because of market competition, customers may attain savings. However, because the price for the generation element will be determined by market influences rather than based on cost of service as in the past. The actual cost to the City under "choice" may be greater than under the current contract. At this time there is no other source practically available for the provision of generation. The Act further provided for a cap on rates as a protection if a customer elects not to change generation supplier. However, it is unclear whether the capped rates are applicable to local governments. By extending the current contract through June 30, 2007 the City will receive rate protection through June 30, 2007 and also agree not to seek an alternate generation supplier.

RESOLUTION
AUTHORIZING ELECTRIC SERVICE
CONTRACT EXTENSION

WHEREAS, the VML/VACo-Appalachian Power Company (APCo) Steering Committee (the "Committee") comprised of representatives of local governments and political subdivisions has for many years negotiated on behalf of such governmental units within the service area of APCo the terms of standard contract forms which have included rates for the purchase of electricity supply and delivery service and for the installation, maintenance and delivery service for street lights by and for said governmental units from APCo as a single source provider; and

WHEREAS, the most recent such contracts for the period beginning July 1, 2000 will terminate on June 30, 2002; and

WHEREAS, on or about February 12, 2001, APCo agreed with the Committee to extend the term of such contracts to December 31, 2003 at rates set forth in the Company's Schedule 17 on file with the Virginia State Corporation Commission (the "Commission") and;

WHEREAS, on or about July 24, 2001, American Electric Power Co. ("AEP"), parent corporation of APCo, filed a proceeding in the Federal Energy Regulation Commission ("FERC") seeking approval of amendment of its intercompany agreement which inter alia affects the supply and computation of the price for electricity furnished to APCo in excess of that produced by APCo, in which proceeding the Steering Committee and the Town of Wytheville appeared and objected; and

WHEREAS, in consideration of the Committee and the Town of Wytheville agreeing to a negotiated settlement of the FERC proceeding which provides substantial protection against potential escalation of the fuel factor which is a component of APCo's total pricing for electricity supplied to its retail customers, including the governmental units, APCo has granted to the governmental units the election to (1) terminate the current contracts on June 30, 2002, or (2) extend the contracts at Schedule 17 rates to

December 31, 2003 pursuant to the offer dated February 12, 2001, or (3)(a) to extend the current contracts through June 30, 2007, at rates contained in APCo's unbundled Standard Rate Schedules, or any successor or replacement schedules then on file and approved by the Commission; and (b) to extend street light service at rates as in effect July 1, 2000, but subject to changes in the fuel factor; provided that election (3) is conditioned upon the governmental unit so electing, notifying APCo of its election within 90 days of December 18, 2001, that (i) it has chosen APCo to provide generation service through June 30, 2007, and (ii) that it will not chose a different supplier prior to such date; and (iii) it will not request the Commission to determine rates and provisions for default service different from that provided under its contract, as amended by election (3); and

WHEREAS, the Steering Committee has recommended that the governmental units, including this jurisdiction, exercise election (3) above, that is, the extension of current contracts with APCo for electric service and delivery thereof from July 1, 2002 through June 30, 2007, including street light contracts, at the rates and subject to the conditions all as set forth in the letter dated December 18, 2001 signed on behalf of APCo and AEP and on behalf of the Steering Committee and the Town of Wytheville, all by counsel, which is attached hereto as Exhibit A and incorporating letters dated February 12 and February 15, 2001 attached hereto as Exhibits B1 and B2.

WHEREAS, on consideration whereof, it appearing to the City Council of the City of Lynchburg that there is only one source practically available which can and will supply electricity service and delivery thereof for the entire needs of the City of Lynchburg at established rates for such bundled service or unbundled generation service for the period from July 1, 2002 through December 31, 2007, as negotiated and recommended by the Committee; and it further appearing that even if there should develop a truly competitive market in the APCo area for generation service, it is questionable whether the Virginia Electricity Restructuring Act (the "Act") provides for capped rates or default rates for public authorities in the APCo area, and if not could place this jurisdiction at a disadvantage in the event it elects to contract with

an alternative supplier or if such alternative supplier should default and be unable to provide the electricity; and it further appearing that notice hereof has been posted or published as specified in Va. Code § 2.2-4303E that competitive sealed bidding and competitive negotiation for such services for such period, are not fiscally advantageous to the public because the procurement process for electric services in a competitive market, even if there should be such a market, must be of such flexibility to provide a rapid response to fluctuating market conditions on a daily, or even hourly, basis; and it further appearing that the contract extensions recommended and agreed to by the Committee will provide this jurisdiction with a safeguard against excessive electricity generation costs both at this date and in the foreseeable future due to a lack of real competition in this area of Virginia; and

WHEREAS, in addition to the fact that no other source is practically available for such electric services for such period, the APCo offer to extend the contracts, being for a limited time, i.e., ninety (90) days from December 18, 2001, is such that an emergency does exist inasmuch as such period is not sufficient for this jurisdiction to correctly assess its entire needs for electric service, whether for the short term or through June 30, 2007, to prepare and receive requests for proposals and to review, consider and act upon any proposals which may possibly be received.

NOW, THEREFORE BE IT RESOLVED that this jurisdiction accepts the offer of APCo to extend its current contract for electric service on a bundled basis, including its street light contract, from July 1, 2002 through June 30, 2007, as set forth in Exhibit A and as agreed and recommended by the Committee.

RESOLVED further that in accordance with the conditions in APCo's offer this jurisdiction agrees that (i) it has chosen APCo to provide generation service through June 30, 2007, (ii) that it will not choose a different supplier prior to such date, and (iii) that it will not request the State Corporation Commission to determine rates and provisions for default service different from that provided in the contracts, as amended and extended as set forth above.

RESOLVED further that the City Manager is authorized to execute and deliver on behalf of this jurisdiction all documents as shall be deemed appropriate to carry out the foregoing action.

The Clerk of Council is directed to notify APCo of the aforesaid election and agreement by transmitting a copy hereof to counsel for the Committee, Howard W. Dobbins, 1021 East Cary Street, P.O. Box 1320, Richmond, VA 23218-1320, who is authorized to deliver the same to APCo.

Adopted:

Certified: _____
Clerk of Council

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